

Findings of Fact

General

4. On January 26, 2004 Blackfoot Telephone Cooperative (Blackfoot) and members of the Western Montana Local Calling Coalition (Coalition, Docket No. D2003.12.170) consisting of Ronan Telephone Company (RTC), Hot Springs Telephone Company (HST), the Confederated Salish and Kootenai Tribes, and the Committee of Ronan Telephone Consumers filed a Joint Motion and Stipulation (Stipulation) before the Public Service Commission (PSC). On February 26, 2004, the PSC approved the Stipulation, subject to the following qualifications:

- a. The Blackfoot EAS (Docket No. D2003.1.8) will proceed at a normal pace, subject to implementation provisions of the Stipulation (*Note: Blackfoot's EAS application was approved on September 21, 2004, PSC Order No. 6502c*);
- b. The carrier members of the Coalition, RTC (Docket No. D2004.2.17) and HST (Docket No. D2004.2.22), will file applications in accordance with the Stipulation;
- c. Community of interest is approved for RTC and HST in accordance with the expediting provisions of the Stipulation, but on an interim basis subject to further investigation;
- d. The carrier members of the Coalition, RTC and HST, will file the Phase II cost analysis and rate design impacts in accordance with the expediting provisions of the Stipulation.

5. The Stipulation did not contemplate either a delay in processing the Blackfoot proceeding or consolidating hearings for the separately docketed EAS applications. The Stipulation essentially resolved several pending disagreements and a withdrawal of objections among the parties. The Stipulation contemplates best, good faith, efforts to simultaneously implement EAS between the Blackfoot, RTC, and HST exchanges with Qwest Corporation's (Qwest) Missoula EAS region.

6. On February 5, 2004, RTC, in accordance with the Stipulation, applied to the PSC for approval of exchange-to-exchange and regional EAS for the Missoula area. The petitioned exchange companies are Qwest and Blackfoot. The proposed exchange-to-exchange and region is as follows: the Missoula EAS region consisting of Qwest exchanges located in Missoula, Darby, Frenchtown, Hamilton, Stevensville, and Victor; and Blackfoot exchanges located in Alberton, Alta, Arlee, Charlo, Clinton, Condon, Dixon, Drummond, Haugan, Noxon, Ovando,

Philipsburg, Plains, Potomac, Seeley Lake, South Alberton, St. Ignatius, St. Regis, Superior, Thompson Falls, and Powell, Idaho; will be expanded to include the RTC exchanges located in Ronan and Pablo.

7. RTC did not conduct, nor was it required to conduct (*ARM 38.5.1315(6)*), a customer survey (ballot) by mail to ascertain customer acceptance of the proposed EAS arrangement. RTC did conduct public informational meetings on three occasions; a Coalition EAS presentation held at the Ninepipes Restaurant (Charlo) on October 23, 2003, where a majority of the attendees indicated support for the proposed Western Montana EAS arrangement; an EAS presentation held at the Ronan Senior Citizens Center on January 14, 2004, where a majority of the attendees indicated support for the proposed Missoula EAS arrangement, and an EAS presentation held at the Ronan Community Center on January 29, 2004, where a majority of the attendees indicated support for the proposed Missoula EAS arrangement.

Community of Interest

8. On March 30, 2004, the PSC noticed the approved Stipulation (done and dated February 26, 2004) subject to the qualification that community of interest is approved for RTC and HST in accordance with the expediting provisions of the Stipulation, but on an interim basis subject to further investigation.

9. RTC, Blackfoot, and Qwest filed their completed call usage studies with the PSC on March 26, 2004, April 9, 2004, and February 24, 2004, respectively. This phase was conducted in accordance with the EAS procedures governing the Phase I - Community of Interest Determination (*ARM 38.5.1313*), and in accordance with the expediting provisions of the Stipulation.

10. A sufficient indication of community of interest between the exchanges will be deemed to exist if, for at least two of the three months studied, RTC (the petitioning exchange) averages at least eight (8) calls per main billed account per month and more than fifty (50) percent of the customers make two or more calls per month to a petitioned exchange (*ARM 38.5.1313(2) (a) and (b)*). The RTC study did not demonstrate a sufficient numeric indication of community of interest.

11. When a proposed EAS arrangement does not qualify using the above calling patterns the applicant can attempt to establish through economic, demographic, or other evidence

that a community of interest does exist for the majority of the affected customers (*ARM 38.5.1313(5)*). In further support of their EAS proposal, RTC presented arguments and other evidence on non-numeric community of interest factors such as local calling for law enforcement, fire protection, medical, and other emergency services. Other factors such as local calling to schools, local government agencies, churches, shopping and service centers, agricultural and civic organizations, and employment centers were also addressed. RTC also requested that the evidence in the Coalition's EAS application (D2003.12.170) demonstrating the strong community links between the Blackfoot and RTC exchanges located on the Flathead Indian Reservation be incorporated into the record of this docket.

Cost Analysis and Rate Design

12. On March 30, 2004, the PSC noticed the approved Stipulation (done and dated February 26, 2004) subject to the qualification that the carrier members of the Coalition, RTC and HST, file the Phase II cost analysis and rate design impacts in accordance with the expediting provisions of the Stipulation.

13. RTC, Blackfoot, and Qwest filed their completed cost analysis and rate design proposals with the PSC on May 4, 2004, May 21, 2004, and June 7, 2004, respectively. This phase was conducted in accordance with the EAS procedures governing the Phase II - Cost Analysis and Rate Design Determination (*ARM 38.5.1315*), and in accordance with the expediting provisions of the Stipulation. On September 28, 2004, RTC filed an alternative rate design proposal that deleted the Senior Citizen Measured Local Calling Plan. Approval of senior citizen discounts requires substantial evidence and argument supporting a rational basis for extending discounts of public utility rates to seniors or any other separately identified demographic group of the utility's subscriber base. There was little or no evidence or argument to support the senior discount in this case.

14. RTC developed proposed EAS rates based on these studies and a review of Qwest's tariff rates within the proposed EAS regions. The proposed EAS rates are designed to offset costs of EAS implementation, including increased calling volumes, and foregone Switched Access, and toll or MTS revenues. Each subscriber will have a choice between an Unlimited Local Calling Plan and a Measured Local Calling Plan. In the case where a residence or business has multiple telephone lines, the selected local calling plan will apply to all the lines located in

these premises. Qualifying Lifeline customers will continue to be eligible for applicable Tier 1, Tier 2, Tier 3, and Tier 4 support mechanisms.

15. The RTC rate design proposal will increase the monthly residential service rate from \$7.75 to \$18.00 for the Unlimited Local Calling Plan and \$7.00 for the Measured Local Calling Plan. For business customers the rate design proposal will increase the monthly service rate from \$16.75 to \$31.00 for the Unlimited Local Calling Plan and \$16.00 for the Measured Local Calling Plan. RTC customers selecting the Measured Local Calling Plan will pay 1.5 cents per minute for outgoing calls terminating within the proposed expanded local calling area. The 1.5 cents per minute measured rate will also apply to calls within each exchange's local calling area (same first three digits). RTC proposes a new detariffed business service called Credit Card Authentication Line (CCAL) which will provide limited business capabilities and is not functionally equivalent to local exchange service. The rate design proposal establishes an \$18.00 monthly service rate for the CCAL business service. RTC estimates that the residential and business take-rates for the Unlimited Local Calling Plan will be 87% and 95%, respectively.

16. The Blackfoot rate design proposal will increase its recently approved (*PSC Order 6502c*) EAS monthly residential service rates from \$25.00 and \$19.00, to \$26.90 and \$20.50, for the Unlimited Local Calling and Measured Local Calling Plans, respectively. For business customers the rate design proposal will increase the recently approved EAS monthly business service rates from \$45.90 and \$35.30, to \$49.70 and \$37.90, for the Unlimited Local Calling and Measured Local Calling Plans, respectively. Blackfoot customers selecting the Measured Local Calling Plans will pay 7 cents per minute for outgoing calls terminating with the RTC exchanges, and 5 cents per minute for all other outgoing calls terminating within the proposed expanded local calling area. Per minute measured rates will not apply to calls within each exchange's local calling area (same first three digits).

17. Qwest calculates the EAS statewide increment increases using a "revenue requirements template" employing the following methodology:

- a. The revenue requirements template includes the impacts listed in ARM 38.5.1315(2).
- b. The amounts for these impacts are determined and allocated to the Montana jurisdiction.

- c. The Montana jurisdictional amounts are adjusted for income taxes to arrive at the earnings required.
- d. The earnings required are grossed-up by an income-to-revenue multiplier to arrive at the estimated revenue requirement from implementation of the proposed EAS routes. The income-to-revenue multiplier includes an uncollectible factor, in addition to income tax rates and other local taxes on revenues rates (e.g. PSC and MCC funding taxes).
- e. The estimated revenue requirements from implementation of the proposed EAS routes is then divided by the statewide EAS qualifying lines to arrive at the new EAS statewide incremental increases.

18. Qwest asserts that the revenue requirements calculation for each of the impacts is consistent with the intent of ARM 38.5.1315(3) to achieve a revenue-neutral EAS rate increment, and that this methodology is consistent with prior EAS applications that have been approved by the PSC.

19. For purposes of the cost study and rate design of each proposed EAS area, Qwest identified the number of statewide EAS qualifying lines at the time of the study for use as the divisor. Depending on the timing of the approval and implementation of this and other pending EAS applications, the divisor may need to be updated, at the direction of the PSC, in determining the actual EAS statewide increments going forward.

20. Qwest's rate design proposal will increase the recently approved \$2.76 statewide EAS increment by \$0.04 to \$2.80 (*see PSC Orders 6502c (Blackfoot) and 6524b (Triangle/Central)*). Qwest will apply the increased EAS increment to all Qwest EAS customers.

21. If the proposed EAS involves two or more companies, the companies shall propose interconnection and compensation arrangements (*ARM 38.5.1315(4)*). An interconnection and compensation arrangement has not been negotiated between Qwest and the other carriers involved. These negotiations will commence immediately upon PSC approval of this EAS application.

Public Hearings

22. Based upon an analysis of the cost and rate design proposals submitted by the

carriers involved, the PSC publicly noticed and held hearings in Ronan and Pablo (*ARM 38.5.1315(6)*). A wealth of public comment was received through those hearings, as well as through writings directed to the PSC. Attendees expressed overwhelming support for the proposed EAS arrangement.

23. At the designated technical hearing, held in Ronan on September 2, 2004, RTC, Blackfoot, Qwest, and other participants who obtained formal party status submitted testimony, exhibits, and comments. At hearing, the RTC EAS application along with all Phase I call usage data, Phase II cost analysis and rate design data, discovery and responses to discovery, and all other previously filed communications were admitted to the record without objections.

Conclusions of Law

24. Although factual and legal requirements must be met before EAS can be ordered, to a large extent EAS is a matter of policy. Resolution of EAS issues is dependent on a correct assessment of what is fair and equitable to all consumers and in the best public interest. When the community of interest criterion is met between exchanges or among exchanges in a region there is a strong indication that EAS may be appropriate. The PSC has compared and judged EAS applications from the standpoint that the public interest is related to community of interest (*Docket No. D95.10.146, Order No. 5889b*).

25. RTC and Qwest are public utilities subject to regulation by the PSC. Blackfoot is a cooperative and, except by necessity in regard to certain proceedings and as expressly set forth in MCA 69.3.831 through 69.3.849 of the “Montana Telecommunications Act”, cooperatives transacting business in Montana pursuant to the “Rural Electric and Telephone Cooperative Act” are exempt in all respects from the jurisdiction and control of the PSC (*MCA 35.18.104(1) and MCA 69.3.823*). The PSC has jurisdiction over the RTC application for expanded EAS with the existing EAS region. Jurisdiction is as provided by Title 69, Ch. 3, MCA.

26. The PSC has fully considered the application of RTC, the call usage studies, the cost analyses and rate design proposals, the proposed interconnection and compensation arrangements, and all evidence and comments filed or presented at hearing, including comments from the public. For the determination of community of interest in the absence of qualifying calling criteria, the PSC deems that the evidence and argument is clear and convincing. The PSC determines that the application, studies, and proposals comply with all applicable laws (*see, ARM*

38.5.1305 through 38.5.1315).

27. The PSC determines that the existing EAS region should be expanded to include additional exchanges. The PSC determines that RTC, Blackfoot, and Qwest should implement the EAS arrangements within 180 days of the service date of this order.

Order

IT IS HEREBY ORDERED that the Missoula EAS region shall be expanded to include the RTC exchanges identified above (*at ¶ 6*). The rates of RTC shall be amended to reflect the rate designs referenced above (*at ¶ 15*). The rates of Blackfoot shall be amended to reflect the rate designs referenced above (*at ¶ 16*). The rates of Qwest shall be amended to reflect the rate designs referenced above (*at ¶ 19 and 20*), and shall be adjusted to reflect the inclusion of Qwest's Havre and Lewistown customers. Compliance tariffs reflecting the rates approved in this order must be filed by the regulated public utilities (RTC and Qwest). The expansion of the Missoula EAS region is approved, and shall be implemented subject to the following conditions;

1. Proposed or estimated implementation plans are to be filed with the PSC within 45 days of the service date of this order, to include a schedule for full implementation, a description of how EAS options will be presented to customers for selection, and a description of the agreed upon interconnection and compensation arrangements.
2. Implementation is to begin no later than 90 days, and be completed no later than 180 days, from the service date of this order. (RTC's implementation is subject to the implementation provisions of the stipulation agreement between Blackfoot and carrier members of the Coalition (RTC and HST (D2004.2.22))).
3. Compliance tariffs reflecting the rates approved in this order must be filed by the regulated public utilities (RTC and Qwest) within 20 days prior to implementation.
4. Customers shall be allowed to change their local service option without charge within 90 days after implementation of these EAS arrangements.

Done and dated this 5th day of October, 2004, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman

THOMAS J. SCHNEIDER, Vice-Chairman

MATT BRAINARD, Commissioner

GREG JERGESON, Commissioner

JAY STOVALL, Commissioner

ATTEST:

Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.